

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 12, 2006 Session

JULIE BARNES ANDERSON v. EARL JAY ANDERSON

Appeal from the Circuit Court for Davidson County
No. 04D-586 Carol Soloman, Judge

No. M2005-02029-COA-R3-CV - Filed on March 29, 2007

The trial court granted both parties a divorce pursuant to Tenn. Code Ann. § 36-4-129 and awarded custody of their two minor children to the wife by stipulation. The court ordered the husband to pay child support in accordance with the current guidelines, as well as both rehabilitative alimony and alimony *in futuro*. The husband argues on appeal that the trial court erred because our Supreme Court has barred concurrent awards of both types of alimony. However, a recent legislative enactment has specifically authorized such awards, thereby rendering husband's argument moot. The husband also argues that the total amount of alimony ordered was excessive and was beyond his ability to pay, and that the trial court erred in decreeing an automatic increase in alimony *in futuro* when the children reach the age of maturity. We agree with both contentions and we modify the trial court's alimony award accordingly. In all other respects we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed as Modified

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM B. CAIN, and FRANK G. CLEMENT, JR., JJ., joined.

John D. Kitch, Nashville, Tennessee, for the appellant, Earl Jay Anderson.

C. LeAnn Smith, Nashville, for the appellee, Julie Barnes Anderson.

OPINION

I. MARRIAGE AND DIVORCE

Earl Jay Anderson ("Husband") and Julie Barnes Anderson ("Wife") married on June 14, 1986. During the course of their marriage, they adopted two young children from Russia. In order to pay the considerable expenses for the adoption, they took out a second mortgage on the marital home. On March 5, 2004, Wife filed a complaint for divorce in the Circuit Court of Davidson

County, alleging inappropriate marital conduct and irreconcilable differences. She asserted that as the primary caregiver, she was the proper person to be awarded primary residential custody of the children.

Husband filed an Answer and Counter-Complaint for divorce, in which he denied that he had engaged in inappropriate marital conduct, but asserted that Wife herself had engaged in such conduct. He admitted that there were irreconcilable differences between the parties. Husband contended that both parents had shared in the parenting and care of the minor children, and asked the court to award them both joint custody.

The parties managed to enter into several pre-trial agreements. An agreed order filed in February of 2005 obligated Husband to make “any and all necessary repairs” on the marital residence within ninety days and stated that upon the completion of the repairs, “the marital residence shall be immediately placed on the market, and the cost of repairs will be paid from the proceeds of the sale of the marital residence.” However, the repairs were not done, and both parties remained in the marital home beyond the time of trial. Husband testified that after the divorce complaint was filed, he began working out at the YMCA after work a few times a week rather than coming home to his wife and children “in order to keep the tension down” between Wife and Husband.

A written stipulation which the parties executed just prior to trial included a detailed Permanent Parenting Plan whereby Wife would be the primary residential parent, but the parties would jointly make decisions about their care and education. The stipulation also included agreements as to the division of home furnishings and other personal property and a provision that the marital home would be placed on the market immediately, with the net proceeds to be divided between the parties.

The case went to trial on June 27, 2005. The Rule 24 Statement of the Evidence¹ shows that the parties verbally announced to the court their willingness to be declared divorced pursuant to Tenn. Code Ann. § 36-4-129. The court heard the testimony of the parties and examined documentary evidence relating to their employment history, their financial condition, and the physical circumstances of the marital home, which was still in a state of disrepair because Husband had not yet made the improvements agreed upon earlier.

The forty-year old wife testified that she had earned \$28,000 to \$30,000 per year in an office position prior to the adoption of the children. She subsequently became a stay-at-home mother so she could take care of them. One child, Chandler, had been diagnosed with ADHD and required special care. At some point, Wife found work as a teacher’s aide for the Metro School System during the regular school year. Her work hours enabled her to take care of the children when they

¹Husband’s attorney moved the trial court to order that a transcript of the trial be prepared. However, the trial court declared that either no tape recording of the proceeds had been made, or if it had been made, it had been taped over. The motion was denied, and in lieu of a transcript, the trial court approved a Rule 24 Statement of the Evidence which was prepared by Wife.

were not in school. She also found a summer job at a day camp. One advantage of that job was that it allowed the children to enroll in the day camp at no cost to her.

According to Wife's income and expense statement, averaging the monthly income from both her jobs and adding child support of \$753 per month to the total resulted in monthly net income of \$1,748. Her statement also showed average monthly expenses of \$2,739, resulting in an average shortfall of \$991.

The forty-two year old husband worked as a commercial sales manager for Lowe's Home Centers, Inc. He testified that his job was physically exhausting and usually required him to work more than forty hours per week. His W-2 forms for 2004 showed total annual income of \$36,948 or \$3,079 per month. His income and expense statement showed net income after taxes and insurance in the amount of \$2,329, and monthly expenses of \$3,252, resulting in a monthly shortfall of \$923.

The court entered a Final Decree of Absolute Divorce on August 1, 2005, which granted the divorce to both parties. The decree recited that the written stipulation entered into by the parties was approved by the court and made a part of its order.² Wife was granted custody of the children in accordance with the parenting plan submitted by the parties and Husband was ordered to pay child support in accordance with the guidelines, in the amount of \$847 per month. Wife was also awarded two-thirds of the equity of the home upon its sale, and Husband one-third.

The decree also ordered Husband to pay Wife \$250 per month in rehabilitative alimony for thirty-six months, as well as \$350 per month as alimony *in futuro* "until both children have emancipated and Husband's child support obligation has ended."³ The decree further ordered that when the children came of age Husband's obligation for *in futuro* alimony was to be increased to \$450 per month. This appeal followed.

II. THE DIVISION OF THE MARITAL HOME

Our trial courts are authorized to make an equitable division of marital property in cases of divorce or legal separation "without regard to marital fault in proportions as the court deems just." Tenn. Code Ann. § 36-4-121(a)(1). An equitable division is not necessarily an equal division, but depends upon the relative circumstances of the parties, as examined in accordance with the factors

²The decree deviated from the stipulation in one respect. The parties stipulated that the marital home would be placed on the market for sale immediately. The decree ordered Husband to vacate the marital home, and to complete certain repairs within sixty days. The decree further declared that "Wife shall reside in the marital residence for as long as she wants to remain, within reason."

³Both children were eight years of age when the divorce decree was rendered.

set out in Tenn. Code Ann. § 36-4-121(c).⁴ Thus, a division of the marital estate is not rendered inequitable merely because it is not mathematically equal. See *Cohen v. Cohen*, 937 S.W.2d 823, 832 (Tenn. 1996); *Ellis v. Ellis*, 748 S.W.2d 424, 428 (Tenn. 1988).

Our trial courts are afforded wide discretion in dividing marital property in divorce cases. Their decisions as to such matters will be presumed to be correct unless the preponderance of the evidence is otherwise. *Manis v. Manis*, 49 S.W.2d 295 (Tenn. Ct. App. 2001); *Loyd v. Loyd*, 860 S.W.2d 409, 411 (Tenn. Ct. App. 1993) *Barnhill v. Barnhill*, 826 S.W.2d 443, 449 (Tenn. Ct. App. 1991).

Husband argues that the trial court erred in awarding two-thirds of the equity in the home to Wife and only one-third to Husband. He concedes that an equitable division is not necessarily an equal division, but complains that the trial court's division is not even close to mathematically equal. However, he does not present any authority for the proposition that an approximation to equality is required in circumstances where a different result would be more equitable.

Our legislature has set out a list of eleven factors for the courts to consider when making an equitable division of marital property. Tenn. Code Ann. § 36-4-121(c). One of the factors in the present case that would support Wife receiving a greater than equal share of the marital assets is "the relative ability of each party for future acquisitions of capital assets and income." Tenn. Code Ann. § 36-4-121(c)(4). Husband is clearly better positioned for such acquisitions than is Wife.

However, another relevant factor for our analysis is "[t]he contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the

⁴Tenn. Code Ann. § 36-4-121(c) reads,
In making equitable division of marital property, the court shall consider all relevant factors including:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
- (3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;
- (4) The relative ability of each party for future acquisitions of capital assets and income;
- (5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;
- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
- (10) The amount of social security benefits available to each spouse; and
- (11) Such other factors as are necessary to consider the equities between the parties.

contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role.” Tenn. Code Ann. § 36-4-121(c)(5).

The upkeep and preservation of the marital home appears to have been a major cause of friction between the parties. The Statement of the Evidence gives some indication of the nature and extent of the problem.

The Wife testified that despite having lived at this residence for over ten (10) years, the house needed numerous repairs. The wife’s second exhibit offered and accepted into evidence by the court was a collection of pictures showing various repairs that needed to be made to the house. Wife testified that for a period of over a year or more that she not have a functioning sink, dishwasher, or stove in the kitchen. The Wife washed dishes for the family in the bathroom tub and she would take dishes to her mother’s residence to wash them. She prepared food at her mother’s home as well for the family’s meals. Wife testified that she did not have a light over the sink in the kitchen and that wires were exposed and hanging down. The wife testified that the downstairs needed to be finished out and that trim and paint work needed to be done.

The photographs in the record bear out Wife’s testimony as to the condition of the house. Husband teaches “Do It Yourself” repair classes at the Lowe’s Home Improvement Center and, according to Wife, is capable of doing those repairs himself. She testified that he started most of those projects, but “left them incomplete when he became bored with them.” Husband testified that he and his stepfather had undertaken a renovation of the kitchen, but his stepfather suffered a stroke “which delayed the repair process.” Husband also admitted on cross-examination that he did not make the repairs because he did not know whether Wife would receive all the equity from the house.

The proof also included a June 2005 price opinion letter prepared by the real estate broker who had originally sold the marital residence to the parties. He had come to the house to inspect it, and estimated its “as-is” value to be between \$115,000 and \$120,000. He also stated that “[i]f the property were improved, in the manner discussed with the owners last December, the property could be marketed in the \$140,000 to \$150,000 range.” The improvements that were discussed apparently referred to finishing the uncompleted repairs that Husband had begun.⁵

The proof indicated that the marital home was the only substantial asset of the marriage and that it had been in substandard condition for quite some time. Husband had signed an agreed order in February of 2005 to make the necessary repairs within ninety days, but had not done so. The

⁵ Loan statements entered into the record showed that the first mortgage on the home had a pay off amount of \$70,689.35 as of July 1, 2005 and that a second mortgage loan had a pay-off amount of \$19,719.90. Thus, if the broker’s opinion was correct, the “as is” value of the equity in the home was between \$25,000 and \$30,000 and completion of the proposed improvements would increase the equity’s value to between \$50,000 and \$60,000.

repairs were still incomplete as of the time of trial, at least in part because Husband was concerned about the ultimate disposition of the equity.

Husband failed to preserve and improve the marital home. His inaction forced Wife and his children to live in physical surroundings that made their lives more difficult. It also reduced the value of the property, and thus the amount of equity available for distribution after divorce. Since Husband, contrary to his agreement, allowed the house to deteriorate, thus dissipating its value, the trial court made an equitable division of the marital property in view of the facts of this case and the relevant statutory factors.

III. THE NATURE OF THE ALIMONY AWARD

Tenn. Code Ann. § 36-5-121 gives our courts the authority in cases of divorce or legal separation to order one spouse to pay alimony to or for the benefit of another.

Husband argues that the trial court committed reversible error by awarding Wife both rehabilitative alimony and alimony *in futuro*, in violation of the Tennessee Supreme Court's holding in *Crabtree v. Crabtree*, 16 S.W.3d 356 (Tenn. 2000). Rehabilitative alimony is a form of support whose purpose is to help a disadvantaged spouse achieve financial independence after divorce. Our legislature has declared a preference for rehabilitative alimony whenever economic rehabilitation is feasible.

It is the intent of the general assembly that a spouse, who is economically disadvantaged relative to the other spouse, be rehabilitated, whenever possible, by the granting of an order for payment of rehabilitative alimony. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

Tenn. Code Ann. § 36-5-121(d)(2).

Alimony *in futuro* is a form of long-term spousal support, which normally continues until the death or remarriage of the recipient. It may be awarded "when the court finds there is relative economic disadvantage and that rehabilitation is not feasible." Tenn. Code Ann. § 36-5-121(f)(1); *Burlew v. Burlew*, 40 S.W.3d 465, 470-71 (Tenn. 2001); *Anderton v. Anderton*, 988 S.W.2d 675 (Tenn. Ct. App. 1998).

In *Crabtree v. Crabtree*, *supra*, the Supreme Court addressed the question of whether the trial court has the power to order concurrent awards of rehabilitative alimony and alimony *in futuro*. Relying on the alimony provisions then in place at Tenn. Code Ann. § 36-5-101(d) the Court reasoned that an award of rehabilitative alimony must be predicated upon a finding that the recipient

can be economically rehabilitated, and that if such rehabilitation was accomplished, alimony *in futuro* would be unnecessary. The court observed that if the recipient's prospects for economic rehabilitation materially changed or if rehabilitation proved not to be feasible, the trial court could then make an award of alimony *in futuro*. The court accordingly concluded that "a concurrent award of both types of alimony is inconsistent." *Crabtree v. Crabtree*, 16 S.W.3d at 360 (Tenn. 2000).

Since the decision in *Crabtree*, however, our legislature has enacted substantial revisions to the statute that governs alimony awards. Many of its former provisions have been amended, new provisions for transitional alimony have been added to those for the previously recognized forms of alimony, and all the provisions for spousal support have been separated from those for child support, and moved from Tenn. Code Ann. § 36-5-101 to Tenn. Code Ann. § 36-5-121.

Among the changes are the inclusion of a specific provision that allows for concurrent awards of rehabilitative alimony and alimony *in futuro* in certain situations:

An award of alimony in futuro may be made, either in addition to an award of rehabilitative alimony, where a spouse may be only partially rehabilitated, or instead of an award of rehabilitative alimony, where rehabilitation is not feasible. . . .

Tenn. Code Ann. § 36-5-121(d)(4).

This amendment superceded the Supreme Court's holding in *Crabtree v. Crabtree, supra*, in regard to concurrent awards of alimony *in futuro* and rehabilitative alimony, at least in cases where a spouse can be only partially rehabilitated. The effective date of the statutory revision was July 1, 2005. The final order in the case before us was entered on August 1, 2005. Thus, the above amendment applies to this case. The trial court could award both rehabilitative and *in futuro* alimony in appropriate circumstances.

Husband argues that we should vacate the trial court's award of alimony *in futuro*, and affirm the rehabilitative alimony only, because Wife ". . . was capable of rehabilitation and the award of rehabilitative alimony was appropriate." While the trial court's dual award implies that the court found the Wife could only partially be rehabilitated, the trial court made no specific finding of fact as to whether Wife was capable of rehabilitation, either partial or total. In the absence of such a finding, we must conduct our own independent review of the record to determine where the preponderance of the evidence lies. *Brooks v. Brooks*, 992 S.W.2d 403, 405 (Tenn. 1999).

As we noted above, the Statement of the Evidence showed that Wife had previously earned between \$28,000 and \$30,000 at an office job. She testified at trial that she had not looked into the same type of position because it would not enable her to spend the same amount of time with the children. She declared that her children were her number one responsibility, and that her minor son's learning disabilities required constant attention and redirection, thereby limiting her employment possibilities.

Under the statutory standard for determining rehabilitation set out in Tenn. Code Ann. § 36-5-121(d)(2), *supra*, Wife would be capable of rehabilitation if, with reasonable effort, she would achieve an earning capacity that would permit her to enjoy a standard of living reasonably comparable to that enjoyed during the marriage or to Husband's expected post-divorce standard of living, considering the equities between the parties. The trial court's award of rehabilitative alimony for three years under the facts of this case indicates to us that the court believed that after three years, wife should attempt to attain a job that would produce a better income even if that job reduced the time she was available to care for the children. If Wife were able to get a job similar to her pre-children employment, with equivalent compensation, then Wife would come closer to achieving rehabilitation, and there is no evidence she could not obtain such employment.

However, the court's award of alimony *in futuro* during and lasting beyond the period of rehabilitative alimony indicates the trial court concluded that, even with employment similar to her previous work, Wife would not be totally rehabilitated, *e.g.*, that her income would not be reasonably equivalent to Husband's.

There was nothing in the record to suggest that Wife's capabilities had declined. Similarly, there is no evidence that as the children mature and become more independent, she would not be able to find a job that would restore her income to its previous level. Based upon our review of the record, we find that Wife is capable of partial rehabilitation. Consequently, the trial court did not err in awarding both rehabilitative and *in futuro* alimony.

Husband does not object to the rehabilitative alimony award, nor does he argue that the amount of the award was excessive, if that were the only amount he was required to pay in alimony. However, he disagrees with the total amount he must pay.

IV. THE AMOUNT OF ALIMONY

Husband argues that the trial court committed reversible error by setting the amount of child support and alimony in an amount that exceeds his ability to pay. As we discussed above, he was ordered to pay \$847 in child support. He was also ordered to pay \$250 per month in rehabilitative alimony and \$350 in alimony *in futuro*, for a total obligation of \$1,447 per month.

It was uncontroverted that Husband's net monthly income from his job at Lowe's was only \$2,329. Subtracting from that sum his obligations under the divorce decree would leave him with only \$882 per month for his living expenses, an amount well below the monthly household requirements set out in his income and expense statement.⁶

⁶We note that the trial court's decree was effectuated through completion of a pre-printed "Order/Notice to Withhold Income for Child Support" directed to Lowe's Home Improvement Warehouse. A total of \$1,447 was ordered to be sent to Wife each month, even though the remittance information included in the pre-printed form states that "[t]he total amount withheld, including your fee, cannot exceed 50% of the employee's aggregate disposable weekly earnings."

The legislature has set out a list of twelve factors to guide the courts “[i]n determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment. . . .” Tenn. Code Ann. § 36-5-121(i).

The most relevant of those factors in this case are the relative earning capacity of each party (Husband appears to have a greater earning capacity than Wife, but not by a large margin once Wife returns to full time work); the duration of the marriage (almost twenty years); the age and mental condition of each party (they were ages forty and forty-two at the time of trial, and their mental condition is not at issue); the physical condition of each party (neither suffers from a physical disability or a chronic debilitating disease); the extent to which it would be undesirable for a party to seek employment outside the home because of the custodianship of a minor child (a consideration favoring Wife); and the provisions made with regard to marital property (Wife received the larger share of the equity in the marital home).

Our courts have stated many times that the two most important factors to consider are the need of the disadvantaged spouse and the obligor spouse’s ability to pay. *Robertson v. Robertson*, 76 S.W.3d 337, 342 (Tenn. 2002); *Burlew v. Burlew*, 40 S.W.3d 465, 470 (Tenn. 2001). Wife asserts that Husband’s ability to pay is greater than his current income suggests, because “[i]t is uncontested that Husband found time to go to the YMCA almost nightly.” However, Husband testified that he worked forty to fifty hours a week, and that his job was physically exhausting. Since there is no indication in the record that Husband is underemployed, the trial court cannot impute any additional income to him, especially for purposes of alimony. See *Goodman v. Goodman*, 8 S.W.3d 289, 295 (Tenn. Ct. App. 1999).

It is a reality of divorce that economic difficulty often ensues for both parties because the same income cannot support two households to the same standard of living as one household was able to enjoy. This court has held that “[i]t would be inappropriate for a trial court to attempt to maintain the pre-divorce financial condition of the innocent spouse by requiring periodic payments of support and maintenance that are beyond the obligor spouse’s ability to pay.” *Goodman v. Goodman*, 8 S.W.2d at 296 (quoting *Shadoin v. Shadoin*, 1986 WL 8975 at *3 (Tenn. Ct. App. 1986)). We further note that if a legislative goal is that the spouses’ post divorce standards of living be reasonably comparable, neither spouse should be pauperized by the court’s order.

We agree with Husband that the total monthly amount of alimony he was ordered to pay exceeded his ability in view of his other obligations and his income. While the appropriate way to address that issue may be debatable, we conclude, based on the facts of this case and the factors relevant to alimony awards, that it is to reduce the monthly obligation for alimony *in futuro*. Accordingly, we modify the trial court’s award of alimony *in futuro* from \$350 per month to \$250 per month. Since Husband has presumably been paying \$350 per month since entry of the trial court’s order, he has overpaid \$100 in each month he has paid the total amount awarded. We direct that Husband will recoup any such overpayment by reducing his alimony payment by \$50 per month until the overage is repaid, with the result he will pay \$200 per month in alimony *in futuro*. At that

point, Husband will be required to pay \$250 per month as long as alimony *in futuro* remains payable and the obligation remains unmodified.

V. THE AUTOMATIC INCREASE IN ALIMONY

Husband also objects to the provision in the divorce decree that automatically increases Husband's obligation for *in futuro* alimony to \$450 per month when the children come of age and child support is no longer required. He argues that the only proper way to increase or decrease a valid alimony award is through a petition to modify alimony, which requires the party asking for the modification to show "a substantial and material change of circumstances" warranting such a change. Tenn. Code Ann. § 36-5-121(a).

Wife notes that this court has approved such an automatic increase in the case of *Erwin v. Erwin*, No. W1998-00801-COA-R3-CV, 2000 WL 987339 (Tenn. Ct. App., June 25, 2000) (no Tenn. R. S.Ct. 11 application filed). In *Erwin*, we observed that Husband's ability to pay alimony was directly affected by the termination of his child support obligation. Since the obligor spouse's ability to pay is one of the most critical factors in determining the appropriate amount of alimony, we reasoned that under the circumstances presented by that case, an automatic increase was justified.

Husband acknowledges that in both the *Erwin* case and in *Bloom v. Bloom*, No. W1998-00365-COA-R3-CV, 2000 WL 34410140 (Tenn. Ct. App. Sept. 14, 2000) (no Tenn. R. S.Ct. 11 application filed) we affirmed orders automatically increasing Husband's alimony obligation when the dependent child reaches majority. He argues, however, that since both of those cases were not appealed to the Supreme Court, they are persuasive authority only, pursuant to Tennessee Supreme Court Rule 4(H)(1).

In enacting Tenn. Code Ann. § 36-5-121, the legislature has granted the courts broad powers to shape alimony awards "according to the nature of the case and the circumstances of the parties." Tenn. Code Ann. § 36-5-121(a). It appears to us that those powers are expansive enough to include such automatic increases where the circumstances warrant. We do not believe, however, that such an automatic increase is warranted under the circumstances of the present case.

We note that the children were both just a few weeks short of their ninth birthdays on August 1, 2005, when the trial court entered its final decree. They will not reach the age of eighteen until nine years later, at which time the automatic increase is scheduled to take effect. The intervening time is long enough to make it likely that there will be other substantial changes in the circumstances of the parties, although we can not know as yet what those changes will prove to be.

We note that in the *Erwin* case, *supra*, the minor child was seventeen years old. In the *Bloom* case, *supra*, he was fifteen. Thus, the inclusion in those cases of an automatic increase in the alimony awards allowed the trial court to shape the award in such a way as to closely track a change in the obligor's ability to pay resulting from a relatively imminent event. By doing so, the court

spared the parties the additional expense and trouble that they would have otherwise incurred from having to re-open the question of alimony so soon after the court's decree.

In the present case, the length of time before the increase is scheduled to go into effect is so long that any predictive advantage is likely to be overcome by the effects of other events, at this point quite unpredictable, such as changes in the employment, income and health of either or both parties. The statutory provisions for modification of alimony awards cited by Husband and set out in Tenn. Code Ann. §§ 36-5-121(a) and 36-5-121(f)(2)(A) would appear to furnish the most appropriate vehicle for dealing with those events, and would relieve the trial court from having to base its judgment on an act of clairvoyance. See *Crabtree v. Crabtree*, 16 S.W.3d at 360. We accordingly vacate the automatic increase.

VI.

The trial court's division of marital property and award of rehabilitative alimony is affirmed. Its award of alimony *in futuro* is modified by reducing it by \$100 per month and eliminating the automatic increase when the children reach their majority. We remand this case to the Circuit Court of Davidson County for any further proceedings necessary. Tax the costs on appeal equally between the appellant and the appellee.

PATRICIA J. COTTRELL, JUDGE